IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.469 OF 1987

Indian Plastics Ltd. & Anr. .. Petitioners.

V/s.

Union of India & another .. Respondents.

Mr.Gaurav Joshi with Mr.Nikhil Mehta i/b. M/s.Mulla & Mulla for the petitioners.

Mr.S.M. Shah with Mrs.S.V. Bharucha for the respondents.

CORAM : R.M. LODHA &
J.P. DEVADHAR, JJ.

DATED : 2ND MAY, 2006.

P.C. :

. The controversy raised in the writ petition fully and squarely stands concluded in the light of the Supreme Court decision given by 9 Judge Bench in the case of Mafatlal Industries Limited V/s. Union of India [1997 (89) E.L.T. 247 (S.C.)].

2. The learned counsel for the petitioners relied upon paragraph 100 of the said judgment in support of his contention that the application for refund was pending before the concerned authority on the date the judgment was delivered in the aforesaid case by the Supreme Court. Paragraph 100 of the report reads thus :

> "100. We take note of the fact that writ petitions / writ appeals / suits claiming refund of excise duties / customs duties may be pending as on today. They are liable to fail on the ground of maintainability by virtue of the law declared herein. Since the law is being declared and clarified by us now, we make the following directions : in cases where writ petitioners, writ appeals (by whatever appellation they are called) or suits (at whatever stage they may be, as on today) are pending as on today, and provided they have not already taken proceedings for refund under the Act, it shall be open to the petitioners / appellants / plaintiffs to file applications for refund under Section 11B within sixty days from today. If the applications are so filed by them, they shall not be rejected on the ground of limitation and shall be dealt with according to law. We make it clear that this direction applies only to petitioners / appellants / plaintiffs in pending writ petitions / writ appeals / suits (pending as on today), as explained hereinabove, and not to any others. The applications so filed under Section 11B shall be disposed of under Section 11B, as interpreted herein, and in accordance with law. It is obvious that if any of such petitioners / appellants / plaintiffs have already taken proceedings for refund under the Act and having failed therein - either partly or wholly - have resorted to writ petition or suit, they shall not be entitled to the benefit of this direction."

3. The learned counsel did not dispute that on the date the decision was given by the Supreme Court in Mafatlal Industries Limited, no proceedings in the nature of writ petition / appeal / suit claiming refund of excise duty was pending. Merely because the application for refund was pending before the concerned authority pursuant to the order passed by this Court in Writ Petition on 23rd June, 1995, pendency of such application would not be covered by

para 100. It is so because the Supreme Court makes it abundantly clear that the direction given in paragraph 100 only applies to pending writ petitions / appeals / suits (as on the date of the judgment) and not to any others.

4. The writ petition is, accordingly, liable to be dismissed and is dismissed with no order as to costs.

5. The respondents shall be free to withdraw the amount of Rs.3,75,098.92 deposited by the petitioners.

6. The expired bank guarantee may be returned to the petitioners.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)